

LAW.

SUPREME COURT.

IN BANCO.

NEW YORK, 23rd APRIL, 1870.

On judgments on the demurrer raised to the plea in exception, were substantially as follows:—

The Chief Justice said:—

This was an action by the plaintiff, a Judge of the District Court, appointed under the District Court Act of 1845, to recover the salary due to him as such Judge, as defendant on the record being a nominal defendant, the salary of the plaintiff alleged to have been improperly withheld.

The cause of action was set forth, in the declaration, in two different ways. The defence was set forth in two pleas. The first plea was that the plaintiff was not a Judge in fact under the services proper to the office of a Judge. The other plea was one of cross action, inasmuch as the plaintiff alleged that the defendant had wrongfully withheld his legal salary, his duty as a Judge. All of these pleas were demurred to by the defendant, and the Chief Justice of the District Court was thereby vested in the Governor and the Executive Council. His Honor ruled the action.

Under that action it was contended, on the part of the plaintiff, that as long as he held the office of District Judge, he was entitled to receive the full salary awarded by the Act, and as there was power given by the Act to the Governor and the Executive Council to remove a Judge from the District Court Judge for inability, it was contended that the only course which could be adopted in case of inability was to remove the Judge from the office, and in the case of withholding portion of the salary was to sue in accordance with the Act, and to do so the Governor was bound to sue. It was contended that the plaintiff had a great number of cases had been cited, where, in the case of *Hunter's* opinion, applicable either as the facts or the law, it was held that military officers were entitled to their salaries, as they were granted with the object of enabling them to perform their duty, and that they were entitled to that salary, as they were granted for their office, so that any paying or withholding of salary was entirely against public policy. Such cases had not much to do with the case at hand, as the salary was not withheld by His Honor, on an arbitrary discretion, as it seemed to be.

All educated persons were aware that about a century ago there was a great difference made in the salaries of the Judges of the District Court, and that the salary was much reduced in former days. All were taught that the salary of the Judges were in position entirely independent, and that the Judges were not to be interfered with, and that each Judge held office during good behavior. It was generally known that the salary of the Judges was a matter ever remembered in the constitution of the State of England. So honourable and independent was the position of the Judges, that it was not to be touched by corruption or question ever been preferred. The salary of the Judges was a subject of great importance to the people of the separate States in America where they were the basis of the people, and were liable to be removed, and the salary was not to be touched by corruption, followed in voice in the number of other nations, and in the case of the United States, the salary of the Judges of the District Court was in parity with the salary of the Judges of the High Courts of the several States, and by the Governor and Executive Council. The Judges of the Supreme Court could only be removed by the Governor and the Executive Council.

ent. The salaries of the Judges of the Supreme Court and the District Court were on the same footing. The

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removed for inability or misbehaviour, by
Executive Council—the latter by

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